

## EXECUTIVE SUMMARY

of the

### FOLLOW-UP REPORT TO THE RECOMMENDATIONS ISSUED BY THE COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

JULY 2014

#### I. Background

1. On 27 July 2012 the Committee on the Elimination of Discrimination against Women (CEDAW) adopted its concluding observations on the combined 7<sup>th</sup> and 8<sup>th</sup> periodic reports submitted by Mexico. The CEDAW requested Mexico to provide, within two years (i.e. 27 July 2014), relevant information on the implementation of its recommendations to, among others, **develop a consistent official registry of enforced disappearances** in order to be able to assess the magnitude of the phenomenon and adopt appropriate policies; **review local penal codes in order to define enforced disappearances as a crime; simplify the existing procedures to activate the Alba Protocol and the Amber Alert**, with a view to launching the search of disappeared women and girls without delay; and **standardize police protocols of search**.
2. The *Fundación para la Justicia y el Estado Democrático de Derecho* and TRIAL (*Track Impunity Always*) submit to the CEDAW written information for the follow-up on the subjects concerned, in order to assess whether the recommendations have been implemented, and to highlight the remaining obstacles. Moreover, reference is made to other issues of concern that disclose the existence of practices and situations which are not in accordance with the international obligations assumed by Mexico.

#### II. The Lack of a Unified Database on Disappeared Persons

3. Despite reiterated recommendations issued by international human rights mechanisms, including the CEDAW, one major problem that persists in Mexico is the **lack of a unified register or database of disappeared persons**. This makes it almost impossible to determine the exact number of victims of this crime and, as a consequence, to articulate an effective search and investigation. This is particularly true when it comes to migrants subjected to disappearance, because in this case Mexico and the authorities of the neighbouring countries do not count with any precise data, while all efforts are left to associations of the civil society. Existing data on the number of disappeared persons, besides being contradictory, do not take into account any gender perspective and make it **almost impossible to determine the precise number of disappeared women**.

*Please refer to paras. 13-27 of the integral follow-up report for details*

### Recommendations

Establish a **national register of persons victims of enforced disappearance**, ensuring that relatives, counsels, human rights defenders and any other person who has a legitimate interest has access to this register.

Ensure that in the mentioned register the phenomenon of **enforced disappearance of migrants is duly documented and its transnational dimension is fully taken into account**, establishing the necessary measures and guarantees to collect information and make it accessible in the different States in the region. It must be further ensured that the mentioned register is set up and maintained with a **specific gender perspective and allows determining with precision the number of disappeared women**.

### III. The Flawed Definition and Criminalization of Enforced Disappearance

4. Art. 215-A of the Federal Criminal Code contains a definition of enforced disappearance that is **not in line with international standards**, thus hampering the prevention, investigation and prosecution of the crime. Despite the order to amend such provision issued by the Inter-American Court of Human Rights, Mexico has failed to do so. Moreover, enforced disappearance is **not codified as an autonomous offence in all the criminal codes of the different States; and, even where a definition exists it is often not in line with international law either**. In particular, the definitions included in the Federal Criminal Code and in some of the States' Criminal Codes fail to include the possibility that enforced disappearances are committed by persons or groups of persons acting on behalf of, with the support, consent or acquiescence of the State. Enforced disappearance is not codified as a crime in the military criminal code. Finally, Mexico lacks a general law on enforced disappearance and **crimes against humanity, including enforced disappearance, are not codified at any level**.

*Please refer to paras. 28-60 of the integral follow-up report for details*

### Recommendations

Mexico shall **amend without further delay Art. 215-A of the Federal Criminal Code** to bring it in line with international standards. Enforced disappearance shall be **codified as an autonomous offence in the criminal code of all the States of Mexico** and those existing definitions that do not meet international standards shall be amended accordingly. Criminal legislation at all levels shall define enforced disappearance as a **continuous offence** and shall ensure that the statute of limitations for criminal proceedings in cases of enforced disappearance take into account the continuous nature of the offence and hence commence to run from when the fate or whereabouts of the victim are established with certainty and made known to their relatives. Criminal codes at all levels shall explicitly define that **a person who acted pursuant to an order to commit enforced disappearance shall not be relieved of criminal responsibility** and that those who refuse to obey such an order will not be punished. Mexico shall amend the military criminal code, including the offence of enforced disappearance. Mexico must **codify, at all levels, crimes against humanity** and explicitly recognize their **imprescriptibility**. Finally, Mexico shall **adopt a general law on enforced disappearances** that creates a specific search procedure for the disappeared person with the participation of the family members of victims; and establish a national registry of forcibly disappeared persons with the guarantee that relatives, lacquers, human rights defenders and any other interested person shall have full access to the

registry. The law shall allow for the **declaration of absence as a result of enforced disappearance**; and it shall be a legal tool for the full support and protection of relatives of the disappeared as well as witnesses and also for the right to integral reparation.

#### **IV. The Simplification of the Procedures to Activate Alba Protocol and the Amber Alert and the Lack of Effective Mechanisms of Search**

5. It does not seem that since 2012 Mexico has adopted specific measures to simplify the procedures to activate Alba Protocol and the Amber Alert. It must be first recalled that **those procedures are in force only for Ciudad Juárez, in the State of Chihuahua, and not across all the territory of Mexico.** Moreover, access to **these mechanisms remains precluded to relatives of disappeared migrants.** In general, **Mexico does not count with an effective mechanism of search of disappeared persons.** Although some measures have been undertaken, such as the establishment of a Specialized Unit for Searching Disappeared Persons within the Office of the Attorney General of Mexico (*Procuraduría General de la República - PGR*) and of an agreement among the International Committee of the Red Cross (ICRC), the PGR and other authorities of the region for the search and investigation of cases of enforced disappearance, no significant results have been accomplished so far. In particular, it must be stressed that **the mechanisms of search do not seem to address the phenomenon in a systematic manner, rather focusing on isolated cases, and they do not duly encompass the transnational dimension of enforced disappearance of migrants.** The **Specialized Unit for Searching Disappeared Persons does not count with the necessary human and financial resources.** Civil society organizations and associations of victims underscore with concern that the search of disappeared persons is so far not designed to find persons alive, but rather to locate mortal remains, while an effective “urgent action” would require a significant paradigm shift. Moreover, civil society organizations and associations of victims have not been duly involved, both by the PGR and the ICRC, in the design of searching strategies. This has not only fostered their feelings of exclusion and marginalization, but has resulted in undermining the lack of confidence towards authorities. **Relatives of disappeared people, and in particular of migrants, face significant obstacles in accessing justice. Often they are not recognized as victims and, especially when they reside abroad, they cannot count on legal representatives before Mexican authorities. With regard to disappeared migrants, families are frequently not aware about which are the competent authorities to be addressed and before which a complaint must be filed.** Ministries of Foreign Affairs and consular authorities have not set up an effective system of communication and do not assist relatives in an effective manner. Ensure the **effective functioning of the Specialized Unit for Searching Disappeared Persons** within the PGR, guaranteeing the **adoption of adequate protocols for the urgent search, aiming at finding disappeared persons alive, and with a systematic approach** that does not focus only on isolated instances. Guarantee that the Specialized Unit

receives **adequate human and financial resources** and counts with a section specifically dedicated to migrants.

*Please refer to paras. 61-68 of the integral follow-up report for details*

### Recommendations

Take effective measures to allow the **prompt activation of Protocol Alba and Amber Alert, making sure that also relatives of migrant persons can access these mechanisms.**

Ensure that before the adoption and publication of any protocol related to databases of disappeared persons, their search or identification, **organizations of civil society are consulted and involved in the process** so that their main needs and expectations are duly taken into account.

Ensure that the **mechanism for searching disappeared persons is conceived with a transnational scope**, so that especially the phenomenon of enforced disappearance of migrants can be adequately addressed.

Ensure that, both with regard to the Specialized Unit for Searching Disappeared Persons and the cooperation agreement among ICRC, PGR and State authorities in the region for searching disappeared persons, the **full participation of civil society organizations and associations of victims in the design of the strategies concerned, their implementation, evaluation and in the decision-making process is guaranteed.**

### V. Other Issues of Concern

6. Besides the issues of concern on which the CEDAW expressly requested Mexico to provide follow-up information, there are other matters that the organizations subscribing the follow-up report would like to bring to the attention of the CEDAW.
7. On 18 March 2008 Mexico ratified the International Convention on the Protection of All Persons from Enforced Disappearances. However, despite various recommendations by different international human rights mechanisms in this sense, so far it failed to recognize the competence of the Committee on Enforced Disappearances to receive and examine individual and inter-State communications. Undisputedly, the recognition of the competence of the Committee on Enforced Disappearances plays a crucial importance in the prevention and suppression of this heinous phenomenon.
8. Moreover, families of disappeared migrants, whose majority is formed by women, **face exceptional obstacles in having access to information concerning investigations in Mexico.** The latter **does not recognize them the status as victims**, thus concretely hampering their access to justice. Moreover, Mexico **does not adopt any specific measure of protection of relatives of disappeared persons living abroad who file complaints or their representatives**, thus leaving them subjected to harassment and threats.
9. Between 2010 and 2012 mass graves containing the mortal remains of hundreds of human beings were discovered in the States of Tamaulipas and Nuevo León. The mass graves correspond to three

massacres (known as “the massacre of 72 migrants in Tamaulipas”, “the 49 common graves of San Fernando”, and “the 49 trunks of Cadereyta”) **where mainly migrants were killed and mutilated**. A significant progress is represented by the establishment of a **Forensic Commission** in August 2013. This Commission, based on an agreement among the Office of the Attorney General of Mexico (PGR), civil society organizations and the Argentine Forensic Anthropologic Team (EAAF) will be in charge of identifying the mortal remains found in the mass graves concerning the three mentioned massacres. Despite this positive development, it is necessary to point out that **new mass graves have been discovered and that the number of mortal remains to be exhumed and identified continues increasing**. Outside the framework of the mentioned agreement leading to the establishment of the Forensic Commissions, **exhumations are characterized by irregularities and mistakes**. Cases of **erroneous identifications have been registered, as well as instances where the remains were cremated without the consent of the family**. These incidents, coupled with the lack of credible information from authorities, have inflicted deep **suffering and frustration to the families of the victims**. The latter, in particular **when residing abroad, have been further marginalized and harmed by the fact that their status as victims has not been duly recognized in the processes before Mexican authorities** which, moreover, seem to lack a scheme of effective cooperation on these matters.

*Please refer to paras. 69-104 of the integral follow-up report for details*

### **Recommendations**

Mexico shall **recognize without further delay the competence of the Committee on Enforced Disappearances** pursuant to Arts. 31 and 32 of the International Convention on the Protection of All Persons from Enforced Disappearances **to receive and examine individual and inter-State communications**.

Adopt effective measures to ensure that **all persons, including those residing outside Mexico, who allege that someone has been subjected to an enforced disappearance, are enabled to file a complaint with competent authorities**.

**Facilitate access to justice for relatives of disappeared persons, in particular in the case of migrants, with mechanisms that can be activated from the country of origin of the migrant person**. Ensure that the latter are **recognized the status as victims and *locus standi* before Mexican authorities, as well as access to effective legal representation**.

Ensure that complainants, the relatives of the disappeared person and their legal representatives have **access to information concerning the investigations**, notwithstanding their place of residence.

Adopt without delay all measures to ensure that the complainants, relatives of disappeared persons, and their legal representatives are **protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given, in particular when they reside abroad**.

Ensure all the necessary **human and financial resources to ensure that the Forensic Commission established pursuant to an agreement between EAAF, PGR and civil society organizations can carry out its mandate in the most effective manner**.

Adopt all measures to ensure that **exhumed mortal remains that may belong to victims of enforced**

**disappearance are not incinerated** before being **duly identified** through reliable scientific tests and in accordance with international standards and, in any case, **never without the previous consent of the family**.

Establish a **national register or unidentified mortal remains**, where, based on the *modus operandi* and the place where the remains were located, it is highlighted which could belong to migrant persons.

Establish effective **transnational mechanisms to exchange information on the identification of mortal remains of disappeared migrants**, and adopt all measures to ensure the respect of the mortal remains and their transfer to the countries of origin, taking into account the religious customs and beliefs of the families concerned, and the existing good practices, as those implemented by EAAF.